

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3062 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

AMADBHAI @ MUNNO GAGJIBHAI MIYANA

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner
Ms.S.S.Talati, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 26/11/98

ORAL JUDGEMENT

1. This writ petition under Article 226 of the Constitution of India has been filed praying for a writ of certiorari for quashing the detention order dated 26.3.1998 passed by the Commissioner of Police, Rajkot, under Section 3(2) of the Prevention of Anti-social Activities Act, 1985 (for short "PASA Act") and for a writ of habeas corpus for immediate release of the

petitioner from illegal detention.

2. Brief facts giving rise to this petition are that the detaining Authority, viz. Commissioner of Police, Rajkot City, after considering the activities of the petitioner, registration of five cases under the Indian Penal Code in the year 1998 and after further considering the statements of three witnesses disclosing anti-social activities of the petitioner which were prejudicial to the maintenance of public order passed detention order and also simultaneously furnished grounds of detention contained in Annexure : B. Alternative remedy was also considered by the detaining Authority, which found that alternative remedy of extermnt could not have been efficacious.

3. This order has been challenged by the learned Counsel for the petitioner on two grounds. Firstly that the activities of the petitioner disclosed in the grounds of detention cannot be said to be prejudicial to maintenance of public order inasmuch as these activities relate to stray incidents between the petitioner and individual witnesses. The second contention has been that the representation of the detenu sent by his Advocate was not considered by the State Government which has rendered the detention and continued detention of the petitioner illegal.

4. Coming to the first point raised by the learned Counsel for the petitioner I do not find any merit in the contention that the subjective satisfaction arrived at by the detaining Authority was mechanical or that the petitioner cannot be described as "dangerous person".

5. A person is said to be dangerous within the meaning of Section 2(b) of the PASA Act who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets commission of any of the offences punishable under Chapter " XVI and XVII of the Indian Penal Code or any of the offences punishable under Chapter 5 of the Arms Act, 1959.

6. From Para : 2 of the grounds of detention it is clear that it was disclosed to the petitioner that he is hardened house breaking thief, head strong, ferocious and quarrelsome person. It was also disclosed that he is associate of Manoj Liladhar Tank, resident of Rajkot which thereby indicates that the petitioner along with Manoj formed a gang of thieves and committed repeated thefts. Theft by breaking open houses situated in different areas of Rajkot city was also alleged against

the petitioner in the grounds of detention. Commission of theft of gold and silver ornaments, cash amount, coloured T.V. carpet, etc. was also disclosed. It was also disclosed that the petitioner was not only committing theft, but was also selling the stolen property and when the witnesses refused to purchase the same being stolen property they were threatened of their life.

7. Stray commission of offences punishable under Chapter : XVI and XVII I.P.C. will not render a person to be termed as "dangerous person". The activities of the petitioner should be frequent and should have been repeated to make it habitual activity within the definition of Section 2(c) of the Act. The Apex Court in *Mustakmiya Jabbarmiya Shaikh v/s. M.M.Mehta, Commissioner of Police*, reported in XXXVI(2) 1995(2) G.L.R. 1268 observed that the word "habitually" means continuity of action and not stray incident. It was further held that in order that detention under Section 3 may be up-held it is necessary to establish that the person habitually indulges in the activities mentioned in this section. It was further observed that the activities of dangerous person must be such so as to disturb the public order and merely because a person is a dangerous person he cannot be placed under preventive detention.

8. Repetition of activities of the petitioner in committing theft as disclosed in the grounds are corroborated from the five cases at three different places in the city of Rajkot under Sections 454, 457, 380, 511 I.P.C. These registered cases, therefore, speak volume of repetition of the anti-social activities of the petitioner who has become habitual thief. The articles stolen and recovered from him are also disclosed in three out of five cases aforesaid. Arrest of the petitioner in these cases was also alleged. The Affidavit of the detaining Authority shows in Para : 8 that out of five cases aforesaid the petitioner did not move bail application in four cases mentioned at Sr.Nos.1 to 4 in the grounds of detention. He applied for bail in the case registered at Sr. No.1. Order for bail was granted to him. He was directed to furnish surety bonds of Rs.5000/-, but he did not file any surety bond and he is still in jail despite the fact that order for bail has been passed by the Judicial Magistrate, Rajkot. Inaction of the petitioner in not filing the surety bond gives some inference that no respectable person, on account of nefarious activities of the petitioner, is coming forward to stand as a surety. This fact also cannot be lost

sight of.

9. Merely because the petitioner is in judicial custody in five cases under the Indian Penal Code is not enough to invalidate the detention order. The Detaining Authority rightly reached subjective satisfaction that the petitioner, if released on bail, could repeat his activity. Detention order was, therefore, justified. Thus, repetition of offences punishable under various sections of Indian Penal Code under Chapter XVI and XVII I.P.C. are *prima facie* disclosed against the petitioner.

10. On these facts the detaining Authority, on the material on record, was justified in reaching subjective satisfaction that the petitioner is a dangerous person.

11. Coming to next question whether the activities of the petitioner were prejudicial to the maintenance of public order or not, it has to be seen whether repeated activities of the petitioner created "sense of terror and panic amongst the residents of Rajkot where the area of operation of the petitioner has been alleged in the grounds of detention. Five registered cases resulting in theft of cash, valuable ornaments, coloured T.V., etc. definitely indicate that the residents of various localities in Rajkot were feeling insecure. This insecurity in the mind of the public in general was further high-lighted by the three witnesses whose statements were considered by the detaining Authority and the detaining Authority confirmed further that the fear in the minds of these witnesses was genuine and on account of fear from the petitioner they were not coming forward to lodge complaint or F.I.R. against the petitioner or to give evidence against him.

12. The first witness gave his statement on 23.3.1998 about the incident dated 14.1.1998. This was not stale activity because the detention order was passed on 26.3.1998 and the Sponsoring Authority could lay its hand over this witness only on 22.3.1998. The incident quoted by this witness cannot be called as isolated activity of the petitioner against the witness. It was an incident of broad day light at 11.00 a.m. Rs.300/- were demanded by the petitioner from the witness and upon his refusal the petitioner became excited. He gave kicks and fists blows to the witness and extorted Rs.130/- from the pocket of the witness. When the witness raised alarm the petitioner became highly excited and placed knife on the abdomen of the witness and he was threatened to be killed. At that time mob of people collected and thereupon the petitioner rushed towards the mob with open

knife as a result of which fear and terror was created in the mind of the public which collected at the spot. Keeping the knife on abdomen, a vital part of the body, in a broad day light and extortion of money, in this incident was likely to disturb maintenance of public order.

13. The second incident narrated by another witness on 23.3.1998 is in relation to incident dated 17.3.1998 which took place at 5.30 p.m. This also can be termed as incident of day light if not broad-day light. Here the petitioner wanted to sell stolen articles to the witness. The witness refused to purchase it on the ground that the articles were stolen and upon this refusal the witness was abused and beaten by kicks and fists by the detenu. Upon alarm persons from the surrounding locality collected. The petitioner took out knife and by putting the same on the neck of the witness, threatened him to kill. Thereafter he rushed towards the mob with open knife. The persons entered in their houses and closed the doors from inside. This incident clearly shows that here again the petitioner placed knife on the neck of the witness. The neck is certainly vital part of the body. On account of anti-social activity of the petitioner the persons who collected at the spot entered their houses under the fear of the petitioner and closed their doors. This incident also cannot be said to be stray incident. Here also public order was likely to be disturbed inasmuch as signal was given to the residents of particular locality that let the petitioner go on committing theft and go on selling the stolen articles and anybody who would refuse to yield to the wishes of the petitioner should face dire consequences including death. This is also an incident which could certainly be prejudicial to the maintenance of public order.

14. The third incident dated 1.2.1998 at 4.00 p.m. was disclosed by another witness on 23.3.1998. Here also the petitioner along with his three associates went to the shop of the victim, consumed four bottles of pepsi. The witness demanded money for pepsi whereafter the petitioner got excited against the witness. The witness was beaten with kicks and fists by catching his collar. The witness told the petitioner that he would file complaint against him and thereupon the petitioner took out knife from the paint and put the knife on the abdomen and threatened to kill him. Alarm was raised and thereupon people collected. The petitioner rushed towards the people with open knife. The people who collected at the spot ran away. Ten to twelve bottles of pepsi in the shop of the witness were broken. Other

articles in the shop were also broken. This was also an incident which was likely to disturb the public order and had created situation prejudicial to maintenance of public order.

15. These incidents involving the petitioner and his three associates confirm the declaration in ground No.2 of the grounds of detention that the petitioner forms a gang inter-alia of Manoj Liladhar Tank. Under these circumstances it can safely be said that the detaining Authority was rightly satisfied from the material on record that the petitioner is a dangerous person and his disclosed anti-social activities were certainly prejudicial to the maintenance of public order. On this ground the detention order cannot be quashed.

16. Inspite of aforesaid subjective satisfaction of the detaining Authority the petition is bound to succeed on the second ground because of peculiar and repeated attitude adopted by the Home Department of the State of Gujarat in not considering the representation of the detenu sent through the Advocate and insisting upon the Advocate either to obtain signature of the detenu or to furnish Vakalatnama and authority letter from the detenu. Counter Affidavit of Shri J.R.Rajput, Under Secretary to the Government of Gujarat, Home Department, shows in para : 2 that one representation dated 15.4.1998 signed by the Advocate of the detenu addressed to the Detaining Authority was sent by the Detaining Authority under his covering letter dated 19.4.1998 which was received by the Home Department on 22.4.1998. Since it was not bearing the signature of the detenu, communication dated 22.4.98 along with the said representation was sent to the Advocate with a request to obtain signature of the detenu on that representation so as to enable the State Government to consider the said representation. However, since no response was received from the Advocate of the detenu in this regard, hence the question of delay in consideration does not arise. This stand of the Under Secretary was tried to be supported by the learned A.G.P. on the ground that if the Advocate of detenu thereafter would have furnished signature of the detenu and would have returned the representation certainly it would have been considered by the State Government. I am unable to appreciate this contention. In the first place when the Advocate of the detenu sent the representation indicating that it was under instruction from her client, no further authority letter or Vakalatnama was required. Repeatedly I have been observing in various cases under the PASA on such approach and fault of the Home Department of the State Government and several detention orders have been

quashed due to fault of the State Government. The Apex Court in the case of Balchand Chorasia v/s. Union of India & ors., reported in AIR 1978 SC 297 on similar facts did not approve the attitude of the concerned Government in dealing with the representation of the detenu sent through his Advocate. Such a callous attitude of the concerned Government was not appreciated by the Apex Court and the detention order was quashed. On the strength of this pronouncement no option is left, but to hold that because of undesirable approach of the Home Department of the State of Gujarat the detention order which could have been otherwise maintained is going to be quashed. Another representation of the same date, viz. of 15.4.1997 was sent in a similar fashion by the Advocate of the detenu to the Chief Minister. Of course the Chief Minister was not an authority to deal with such representation. The grounds of detention Annexure : B clearly mentioned that the representation, if any, has to be sent to the Deputy Secretary, Home Department, (Special), Gujarat State, Gandhinagar. Still, it seems to be the courtesy of the office of the Chief Minister that this representation of the petitioner which was received in his office on 16.4.1998 was put in motion immediately and was forwarded to the Home Department of the State Government on the same date. Inspite of this expeditious approach towards the representation of the detenu by the office of the Chief Minister, the Home Department adopted the same undesirable approach and did not consider the representation observing that since it was sent with no authority letter or Vakalatnama and further because it was not bearing the signature of the detenu it was not taken into consideration. The Home Department sent a communication to the detenu on 17.4.1998 which means that the representation dated 15.4.1998 of the detenu was not considered by the State Government for the reasons which are wholly unsustainable. If in these circumstances similar identical representation dated 15.4.1998 which routed through the detaining Authority under his letter dated 19.4.1998 and which reached the Home Department on 22.4.1998 was returned to the Advocate of detenu for further compliance and the advocate of the detenu did not make further compliance, she cannot be blamed for any reason whatsoever. The first representation having identical ground was already not considered by the State Government prior to the receipt of second representation which would disclose further inaction on the part of the Home Department.

17. In view of aforesaid discussions inaction of the Home Department of the State of Gujarat has rendered the

detention and continued detention of the petitioner illegal solely on technical ground.

18. The writ petition therefore succeeds and is hereby allowed. The detention order dated 26.3.1998 is quashed. The petitioner shall be released forthwith from custody unless he is wanted in some other criminal case.

sd/-

* * * * *

sas